

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATEO REYES, *individually and on behalf of others*
similarly situated,

Plaintiff,

-v-

CAFE COUSINA RESTAURANT INC. (d/b/a
CAFÉ COUSINA RESTAURANT), MARIA
CARINO, and ISRAEL MORAN,

Defendants.

18 Civ. 1873 (PAE) (DF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

On March 1, 2018, plaintiff Mateo Reyes, purportedly on behalf of himself and others similarly situated, commenced this putative collective action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, and the New York Labor Law, §§ 190, *et seq.*, and 650, *et seq.*, to recover unpaid minimum and overtime wages, unpaid spread-of-hours pay, statutory damages, liquidated damages, prejudgment interest, and attorneys' fees and costs. After defendants failed to move, answer, or otherwise respond to the Complaint, this Court entered a default judgment against them in Reyes's favor, Dkt. 29, and referred the matter to the Hon. Debra Freeman, United States Magistrate Judge, to conduct an inquest concerning Reyes's damages, Dkt. 28.

Before the Court is Judge Freeman's August 27, 2019 Report and Recommendation, recommending that the Court hold defendants jointly and severally liable to Reyes for (1) damages in the amount of \$126,905.50, representing (a) \$53,088.75 in unpaid overtime wages, (b) \$5,364 in unpaid spread-of-hours pay, (c) \$58,452.75 in liquidated damages under state law,

and (d) \$10,000 in statutory damages under state law; (2) prejudgment interest in the amount of \$7,700.21, plus additional prejudgment interest to be calculated by the Clerk from August 28, 2018 to the date of the entry of final judgment; and (3) attorneys' fees and costs in the amounts of \$4,275 and \$400, respectively. Dkt. 35 ("Report"). The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts this recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. UPS*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Freeman's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that "FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW," Report at 34, the parties' failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court holds defendants jointly and severally liable to Reyes for (1) damages in the amount of \$126,905.50, representing (a) \$53,088.75 in unpaid overtime wages, (b) \$5364 in unpaid spread-of-hours pay, (c) \$58,452.75 in liquidated damages under state law, and (d) \$10,000 in statutory damages under state law; (2) prejudgment interest in the amount of \$7,700.21, plus additional prejudgment interest to be calculated by the Clerk from August 28, 2018 to the date of the entry of final judgment; and (3) attorneys' fees and costs in the amounts of \$4,275 and \$400, respectively. The Court respectfully directs the Clerk of Court to close this case.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: October 7, 2019
New York, New York